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TITLE 1

ABSTRACTERS AND ABSTRACTS OF TITLE

Chapter

1. Board of Abstract Commissioners.

CHAPTER 1

BOARD OF ABSTRACT COMMISSIONERS

Sunset Act. — Section 63-55-7 provides that Chapter 1, Title 1 terminates on July 1, 1990.

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1-1-1. Prerequisites to engaging in business.

Except as hereinafter provided, any person, firm or corporation desiring to engage in or continue the business of dealing in, making and compiling abstracts of title to real and personal property within the state of Utah shall have in charge of such business a registered abstracter, as hereinafter defined, and shall first obtain a certificate of authority, and file and furnish the bond or other securities required, and shall comply with the other requirements herein provided, save and except as may be hereinafter expressly excepted.

History: L. 1937, ch. 1, § 2; C. 1943, 1-0-6.

Cross-References. — Doing business without license, misdemeanor, § 76-8-410.

Partition cases, abstracts in, § 78-39-48.

Recorders' fees, § 21-2-3.

COLLATERAL REFERENCES

Am. Jur. 2d. — 1 Am. Jur. 2d Abstracts of Title, §§ 4, 8 to 10.

C.J.S. — 1 C.J.S. Abstracts of Title § 3.

A.L.R. — Third persons: liability of one preparing abstract of title, for deficiencies therein, to one other than person directly contracting for abstract, 34 A.L.R.3d 1122.

Amount of attorneys' compensation in matters involving real estate, 58 A.L.R.3d 201.

Liability of attorney for negligence in con-

nection with investigation or certification of title to real estate, 59 A.L.R.3d 1176.

Negligence in preparing abstract of title as ground of liability to one other than person ordering abstract, 50 A.L.R.4th 314.

Key Numbers. — Abstracts of Title ⇐ 1.

1-1-2. Board of Abstract Commissioners — Creation and membership.

There is hereby created a board to be known as the Board of Abstract Commissioners, to carry out the purposes and enforce the provisions of this act; said board shall consist of three members to be appointed by the governor of the state of Utah, such members shall be registered abstracters. Each member of said board shall serve thereon for a term of three years and until his successor is appointed and qualified, excepting that the first members of said board shall be appointed from abstracters who have been actively engaged in the preparation of abstracts of title in the state of Utah for at least five years immediately preceding the 1st day of January, 1937, and shall be appointed, one for one year, one for two years and the other for three years; the term of office to commence on the date this law goes into effect. Each member of said board shall qualify by taking the oath provided by law for public officers; vacancies on said board caused by death, resignation or otherwise shall be filled by appointment by the governor, as provided above.

History: L. 1937, ch. 1, § 3; C. 1943, 1-0-7.

Meaning of "this act". — The term "this act," referred to near the beginning of this section, means Laws 1937, Chapter 1, which ap-

pears as §§ 1-1-1, 1-1-2, and 1-1-3 to 1-1-19. The reference probably should now read "this chapter."

COLLATERAL REFERENCES

Am. Jur. 2d. — 51 Am. Jur. 2d Licenses and Permits § 51.

C.J.S. — 53 C.J.S. Licenses § 37.

Key Numbers. — Licenses ⇐ 21.

1-1-2.5. Procedures — Adjudicative proceedings.

The board shall comply with the procedures and requirements of Chapter 46b, Title 63, in its adjudicative proceedings.

History: C. 1953, 1-1-2.5, enacted by L. 1987, ch. 161, § 1.

Effective Dates. — Laws 1987, ch. 161,

§ 315 makes the act effective on January 1, 1988.

1-1-3. Organization of board — Powers and duties.

Said board shall organize by the election of a chairman and a secretary. The secretary may or may not be a member of said board, but shall be a registered abstracter as hereinafter defined and shall be engaged in that business. The board shall have a seal and shall have the power to compel the attendance of witnesses, and the chairman and secretary shall have power to administer oaths. Said board may adopt such rules and regulations as it shall deem necessary for the proper administration of its powers and duties and the carrying out of the purposes of this act.

History: L. 1937, ch. 1, § 4; C. 1943, 1-0-8.
Meaning of "this act". — See same catchline in notes following § 1-1-2.

Cross-References. — Administrative rule-making, Chapter 46a of Title 63.

1-1-4. Compensation of members of board.

Each member of the board shall receive compensation of \$25 per day for actual services while attending meetings or otherwise engaged upon business connected with [the] board and shall also be entitled to receive travel expenses as provided for in the rules and regulations concerning such travel expenses adopted under § 63-2-15 [as established by the Division of Finance].

History: L. 1937, ch. 1, § 5; C. 1943, 1-0-9; L. 1971, ch. 1, § 1.

Compiler's Notes. — Section 63-2-15, referred to at the end of this section, was repealed by Laws 1981, ch. 257, § 13. The bracketed language following reference to that section was inserted pursuant to instructions by the Office of Legislative Research and General Counsel.

1-1-5. Deposit of fees in General Fund — Budget.

All fees and moneys received under the provisions of this act shall be deposited with the state treasurer to the credit of the General Fund.

The director shall prepare and submit to the governor, to be included in his budget to be submitted to the Legislature, a budget of the requirements for the expenses of the Board of Abstract Commissioners and for administration of this act for the fiscal year next following the convening of the Legislature.

History: L. 1937, ch. 1, § 6; C. 1943, 1-0-10; L. 1967, ch. 1, § 1; 1969, ch. 1, § 1.

Meaning of "this act". — The term "this act," referred to in the first paragraph, means Laws 1937, Chapter 1, which appears as §§ 1-1-1, 1-1-2, and 1-1-3 to 1-1-19.

The term "this act," referred to in the second paragraph, means Laws 1967, Chapter 1, which appears as §§ 1-1-5 and 1-1-7.

Both references to "this act" should probably read "this chapter."

1-1-6. Register of applicants.

Said board shall keep a register, wherein it shall enter the name of all applicants for registration, and for certificates of authority, with their place of business and such other information as may be deemed appropriate, including the action taken by said board thereon, and the dates upon which certificates of registration and certificates of authority are issued.

History: L. 1937, ch. 1, § 7; C. 1943, 1-0-11.

1-1-7. Biennial report.

Said board shall make a biennial report to the governor, which report shall contain a full statement of its doings and proceedings and such recommendations as to it may seem proper for the better carrying out of the intents and purposes of this act.

History: L. 1937, ch. 1, § 8; C. 1943, 1-0-12;
L. 1967, ch. 1, § 2.

Meaning of "this act". — See same catch-line in notes following § 1-1-2.

1-1-8. "Registered abstracters" defined.

Registered abstracters, within the meaning of this act, shall comprise all persons who shall be granted certificates of registration by the said Board of Abstract Commissioners after the passage of this act.

History: L. 1937, ch. 1, § 9; C. 1943, 1-0-13.

Meaning of "this act". — See same catch-line in notes following § 1-1-2.

1-1-9. Application for certificate of registration — Examinations — Fees.

Any person desiring to obtain a certificate of registration under this act shall make application to said board therefor and shall pay to the secretary of said board an examination fee to be fixed by the board but not to exceed \$50. Such application shall be upon a form to be prepared by said board and to contain such information as may be desired by it. Thereupon said board shall fix a date and place for the examination of such applicant, of which notice shall be given to the applicant by mail, who shall present himself at such meeting; whereupon said board shall proceed to examine such applicant or applicants under such rules and regulations as may be by said board prescribed.

History: L. 1937, ch. 1, § 10; C. 1943, 1-0-14; L. 1971, ch. 1, § 1.

Meaning of "this act". — See same catch-line in notes following § 1-1-2.

Cross-References. — Administrative rule-making, Chapter 46a of Title 63.

COLLATERAL REFERENCES

Am. Jur. 2d. — 51 Am. Jur. 2d Licenses and Permits § 47.

C.J.S. — 1 C.J.S. Abstracts of Title § 3; 53 C.J.S. Licenses § 34.

Key Numbers. — Abstracts of Title ☞ 1; Licenses ☞ 21.

1-1-10. Contents and effect of certificate — Fee and renewal — Re-examination.

The certificate of registration issued by said board under the provision hereof shall recite, among other things, that the holder thereof has complied with the provisions of this act relating to examination or otherwise, and shall entitle the holder of such certificate of registration to take charge of any abstract office in any county in this state holding a certificate of authority under the provisions of this act.

Certificates of registration shall be issued upon the payment of a fee to be fixed by the board not to exceed \$25 and shall be valid for one year from the date thereof but shall be renewed annually by said board upon application within thirty days prior to the expiration thereof and upon payment to the secretary of said board of a renewal fee to be fixed by the board not to exceed \$25. Said board may issue temporary certificates of registration in their discretion between meetings of said board.

If the holder of a certificate of registration fails to renew the certificate for a twelve-month period after its expiration date, the certificate shall not be renewed thereafter unless such individual shall take and pass another abstracter's examination as provided for in § 1-1-9.

History: L. 1937, ch. 1, § 11; C. 1943, 1-0-15; L. 1971, ch. 1, § 1.

Meaning of "this act". — The term "this act," referred to near the middle of the first paragraph, means Laws 1937, Chapter 1, which appears as §§ 1-1-1, 1-1-2, and 1-1-3 to 1-1-9.

The term "this act," referred to at the end of the first paragraph, means Laws 1971, Chapter 1, which appears as §§ 1-1-4 and 1-1-9 to 1-1-12.

Both references to "this act" should probably read "this chapter."

1-1-11. Application for certificate of authority — Fees — Renewals — Contents and effect of certificate.

Any person, firm or corporation desiring to obtain a certificate of authority under this act shall make application to said board therefor and shall pay to the secretary of said board an application fee to be fixed by the board not to exceed \$25. Such application shall be upon a form to be prepared by said board and to contain such information as may be desired by it.

Every person, firm or corporation, who shall furnish satisfactory proof to said board that the applicant has in charge of such business a registered abstracter, as provided for in § 1-1-1, and shall furnish the bond, or other securities, and pay the application fee herein provided, shall be entitled, upon compliance with the other provisions of this law and the rules and regulations of the board to receive from said board a certificate of authority.

Certificates of authority shall be valid for one year from July 1 to the following June 30 and shall be renewed by said board upon application within thirty days prior to the expiration thereof upon payment to the secretary of said board of a renewal fee to be fixed by the board not to exceed \$25, which application shall be accompanied by an affidavit and such other evidence as may be deemed necessary to show that the applicant has complied with the provisions of this law and the rules and regulations of the board.

If the certificate of authority has not been renewed by July 1, the secretary of the board shall give notice of this to the holder of the expired certificate by

certified mail. If the holder of the expired certificate then fails to renew the certificate of authority by July 15, the secretary of the board shall give notice of this failure to the county recorder in all counties where the abstractor was previously registered. The holder of an expired certificate and its agents and employees shall not prepare any abstracts of title or conduct any abstract business until a current certificate of authority has been obtained from the board.

The certificate of authority issued by said board under the provisions hereof shall, among other things, recite that the bond or bonds or other securities, as hereinafter required, have been duly filed and approved. The certificate shall authorize the person, firm or corporation named in it to engage in and carry on the business of an abstractor of titles in any county or counties of the state of Utah, in which said person, firm or corporation desires to conduct such abstract business, and for that purpose to have free access, except as prohibited by statute, to all records, books, accounts, maps, plats, and surveys in any office of any city, town or county, of the state of Utah, and of said state, during office hours and, to microfilm, photograph, or photocopy same, and to make such memoranda or notation therefrom as may be necessary for the purpose of making such abstracts, and the compiling, posting, copying and keeping up of their abstract books, indices or records.

History: L. 1937, ch. 1, § 12; C. 1943, 1-0-16; L. 1971, ch. 1, § 1.

Cross-References. — Administrative rule-making, Chapter 46a of Title 63.

Meaning of "this act". — See same catchline in notes following § 1-1-2.

1-1-12. Bond or deposit of securities required for issuance of certificate of authority — Right of action on abstract.

Before a certificate of authority shall be issued, the applicant shall file with the board a bond or bonds, to be approved by it, running to the state of Utah, in the penal sum of \$20,000 in counties having cities of the first or second class and in all other counties in the sum of \$10,000 for the use of any owner, mortgagee or other person having an actual interest in the property covered by an abstract of title, who may be aggrieved. The bond or undertaking shall be conditioned for the payment by such abstractor of any and all damages that may be sustained by or may accrue to any such person by reason of or on account of any error, deficiency or mistake in any abstract or certificate of title, or any continuation thereof, made or issued by such abstractor. Said bond shall allow for operation in one county only, and an additional bond shall be required for operation in each additional county; but the applicant may file in lieu of the individual bonds for each county a bond permitting operation in all counties in the state of Utah in the penal sum of \$50,000. The bond or undertaking herein provided for shall be in full force and effect for a period of one year and may be renewed annually by a continuation certificate; but such continuation certificate shall not increase the amount of liability under the original bond; provided that in lieu of such bond or bonds, said applicant may deposit with the state treasurer of the state of Utah, securities as the board may prescribe, approve and deem fully sufficient to ensure the payment of the penal sum or sums as above provided. Such securities so deposited may be

exchanged from time to time, with the approval of the board, for other securities. The party so depositing such securities shall have the right and shall be permitted to receive the interest and dividends on the securities so deposited. Said securities shall be exempt from execution but shall be subject to sale and transfer and to the disposal of the proceeds by said board only on the order of a court of competent jurisdiction and only for the benefit of persons aggrieved as in this section provided. The state treasurer shall give his receipts for such securities, and the state shall be responsible for their custody and safe return.

Any person suffering loss because of having relied upon an abstract shall have a right of action for the amount of damages sustained; but such liability shall not accrue in favor of any person who had actual notice of the error or mistake complained of.

History: L. 1937, ch. 1, § 13; C. 1943, 1-0-17; L. 1971, ch. 1, § 1.

COLLATERAL REFERENCES

Am. Jur. 2d. — 1 Am. Jur. 2d Abstracts of Title §§ 12 to 14; 51 Am. Jur. 2d Licenses and Permits §§ 48, 49, 55.

C.J.S. — 53 C.J.S. Licenses § 36.

A.L.R. — Liability of one preparing abstract

of title, for deficiencies therein, to one other than person directly contracting for abstract, 34 A.L.R.3d 1122.

Key Numbers. — Licenses ⇌ 26.

1-1-13. Seal of abstract firm.

Any person, firm or corporation furnishing abstracts of title under the provisions hereof shall provide a seal, which seal shall have stamped thereon the name and location of such person, firm or corporation, and shall deposit with the secretary of the board an impression of such seal and the names of persons authorized to sign certificates to abstracts before the certificate of authority shall issue, which seal shall be affixed to every abstract or certificate of title issued by such person, firm or corporation, and to every continuation thereof.

History: L. 1937, ch. 1, § 14; C. 1943, 1-0-18.

1-1-14. Cancellation and revocation of certificates.

(1) The board may cancel and revoke any certificate of registration issued to any person under the provisions of this chapter if:

- (a) the certificate holder violates any of the provisions of this chapter;
- (b) the certificate holder is convicted of a crime involving moral turpitude; or

- (c) the board finds that the certificate holder is guilty of habitual carelessness, inattention to business, fraudulent practices, or is incompetent.

(2) The board may cancel and revoke any certificate of authority issued to any person, firm, or corporation under the provisions of this chapter for:

- (a) failure to furnish the bonds or other securities required by § 1-1-12;
- (b) failure to furnish any new or additional bonds that the board considers necessary;

- (c) failure to have a registered abstracter in charge of the business; or
- (d) violating any of the provisions of this chapter.

(3) If a notice of agency action is filed alleging that a certificate should be cancelled or revoked for any of the reasons allowed by Subsection (1) or (2), the board shall follow the procedures and requirements of Chapter 46b, Title 63.

(4) (a) Either the abstracter or the complainant may obtain judicial review of the board's decision.

(b) Venue for judicial review of informal adjudicative proceedings is in the district court of the county in which the abstracter has his place of business.

History: L. 1937, ch. 1, § 15; C. 1943, 1-0-19; L. 1987, ch. 161, § 2.

Amendment Notes. — The 1987 amendment, effective January 1, 1988, rewrote the

provisions of this section, as enacted by Laws 1937, ch. 1, § 15, to the extent that a detailed analysis is impracticable.

COLLATERAL REFERENCES

Am. Jur. 2d. — 51 Am. Jur. 2d Licenses and Permits §§ 58 to 62, 83, 84.

C.J.S. — 53 C.J.S. Licenses § 44.
Key Numbers. — Licenses ⇌ 38.

1-1-15. Abstracts as prima facie evidence.

Any abstract of title certified to be true and correct by any abstracter holding a valid and subsisting certificate of authority from the board, as herein provided, or by any county recorder shall be received by the courts of this state as prima facie evidence of its contents under such rules and regulations as to procedure as such courts may promulgate.

History: L. 1937, ch. 1, § 16; C. 1943, 1-0-20.

COLLATERAL REFERENCES

C.J.S. — 1 C.J.S. Abstracts of Title § 2.
Key Numbers. — Abstracts of Title ⇌ 1.

1-1-16. Violation of chapter a misdemeanor.

Any person, firm or corporation, making, dealing in, compiling or certifying to abstracts of title to property in this state without having complied with the provisions of this act shall be deemed guilty of a misdemeanor.

History: L. 1937, ch. 1, § 17; C. 1943, 1-0-21.

Cross-References. — Sentencing for misdemeanors, §§ 76-3-201, 76-3-204, 76-3-301.

COLLATERAL REFERENCES

Am. Jur. 2d. — 51 Am. Jur. 2d Licenses and Permits §§ 70, 72.

C.J.S. — 53 C.J.S. Licenses §§ 62 to 71.
Key Numbers. — Licenses ⇌ 40 to 42.

1-1-17. Employment of clerical assistants permitted.

Nothing in this act shall be construed as prohibiting any person, firm or corporation holding a valid and subsisting certificate of authority as herein provided, from employing such additional clerical and stenographic assistants as may be necessary; provided, however, that such assistants are at all times under the supervision of a registered abstractor.

History: L. 1937, ch. 1, § 18; C. 1943, 1-0-22.

Meaning of "this act". — See same catch-line in notes following § 1-1-2.

1-1-18. Repealed.

Repeals. — Laws 1987, ch. 50, § 7 repeals § 1-1-18, as enacted by Laws 1937, ch. 1, § 19, providing an exemption for county recorders

from the provisions of this chapter, effective April 27, 1987.

1-1-19. Separability clause.

If any section, sentence, clause or phrase of this act is for any reason held to be unconstitutional or invalid such decision shall not affect the validity of the remaining portions of the same.

History: L. 1937, ch. 1, § 20; C. 1943, 1-0-24.

Meaning of "this act". — See same catch-line in notes following § 1-1-2.